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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16

17 ADRIENNE FRASER, CODEY DeNOYELLES,)
CHEVALIA MORGAN, CAROLYN)
18 FLOWERS, PETRINA FENNELL, JILL)
MAYER, KAT HALL, EUGENE F. ELANDER,)
19 IRIS DELGADO, and CHRISTA RODRIGUEZ)

20 Plaintiff(s),)

21 vs.)

22 CAL-MAINE FOODS, INC., ROSE ACRE)
FARMS, INC., MICHAEL FOODS, INC.,)
23 HILLANDALE FARMS, TRILLIUM FARM)
HOLDINGS, LLC., REMBRANDT)
24 ENTERPRISES, INC., HICKMAN'S EGG)
RANCH, INC., DAYBREAK FOODS, INC.,)
25 WEAVER BROS., INC., PRAIRIE STAR)
FARMS, LLC., SPARBOE FOODS CORP.,)
26 HERBRUCK'S POULTRY RANCH, INC.,)
WABASH VALLEY PRODUCE, INC.,)
27 CENTRUM VALLEY FARMS, L.P., OPAL)
FOODS, LLC., WHOLE FOODS MARKET)
28 GROUP, INC., COSTCO WHOLESALE CORP.,)
RALEY'S, STATER BROS. HOLDINGS, INC.,)

Case No.:

CLASS ACTION COMPLAINT FOR

- 1. **Violations of Cal. Penal Code § 396;**
- 2. **Violation of the Unfair Business Practices (Cal. Bus. And Prof. Code § 17200 et seq.)**

April 20, 2020

1 WAL-MART STORES, INC., AMAZON.COM,)
 INC., SAVE MART SUPERMARKETS,)
 2 ALBERTSON’S COMPANIES, INC., TRADER)
 JOE’S CO., THE KROGER CO., WINCO)
 3 HOLDINGS, INC.)
)
 4)
 Defendant(s).)
 5)

6
7 **INTRODUCTION**

8 1. This California class action concerns the despicable and illegal practice of price-
 9 gouging of essential groceries, specifically eggs, in the midst of the ongoing and unprecedented
 10 pandemic. Plaintiffs and the class they seek to represent bought grossly marked-up eggs through the
 11 supply chain created by the defendants, which includes producers, wholesalers, and retailers. Because
 12 consumers such as plaintiffs lack access to information about which of the defendants, or all of them,
 13 participated in the price-gouging resulting in a near-tripling of egg prices in the past 30 days, plaintiffs
 14 have sued all the defendants in the alternative. Plaintiffs cannot assert that every defendant engaged
 15 in price-gouging, but plaintiffs can and do assert that some or all of these defendants illegally marked
 16 up egg prices following the Governor’s declaration of an emergency in violation of California law.

17 2. The world is in the midst of a global pandemic involving a novel coronavirus called
 18 COVID-19 that causes an often severe and sometimes fatal respiratory infection. The outbreak
 19 originated in December, 2019, in Wuhan, Hubei Province, China, and in short order the local
 20 epidemic spread globally and was deemed a pandemic by the World Health Organization in March,
 21 2020.

22 2. The first reported case of COVID-19 in the United States was diagnosed in
 23 Washington state in late January, 2020. The case involved a man who had recently travelled to the
 24 epicenter of the outbreak in Wuhan.

25 3. By mid-March 2020, there were reported cases in all 50 American states. The federal
 26 government, most states, and many local governments called for stay-at-home and social distancing
 27 measures designed to slow the spread of the disease. California’s Governor, Gavin Newsom, declared
 28 a state of emergency in this state on March 4, 2020. As of the writing of this complaint, the vast

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1 majority of Americans are subject to these measures. Even in areas not subject to government-
2 mandated stay-at-home orders, most people are voluntarily staying at home except to shop for
3 necessities and to go to work in “essential” occupations such as healthcare and food sales and delivery
4 services. The undersigned counsel writing this complaint is doing so from his home office.

5 4. The economic effect of the government-mandated and voluntary measures to combat
6 the pandemic has been extreme. Many are out of work. Many have had their wages and salaries
7 reduced. Bars and restaurants have been mostly closed for weeks, some remaining open but limiting
8 themselves to curbside delivery and home delivery, and it is predicted many will never re-open.
9 Professional and college sports seasons have been canceled altogether, throwing many out of work.
10 Schools, colleges, and universities are now limited to online classes. Those in the business of putting
11 on concerts, plays, and other forms of entertainment are idle as public gatherings have been banned.
12 All casinos are closed, throwing many more out of work. Hollywood Boulevard, Rodeo Drive, and
13 Haight-Asbury are all deserted. Oil prices are at their lowest point in decades. The stock market is in
14 freefall.

15 5. As in any time of economic turmoil, there are those who seek to profit from the misery
16 of millions. Defendants, who are producers, wholesalers, and retailers of eggs, comprise one such set
17 of actors seeking to unfairly profit from the increased consumer demand for eggs in the midst of the
18 ongoing crisis. Again, because it is impossible for consumers such as plaintiffs to obtain information
19 concerning the secretive process of price-setting, this lawsuit does not assert that each and every
20 defendant engaged in price-gouging. Rather, plaintiffs assert that, at a minimum, some of these
21 defendants did so. This pleading in the alternative is specifically authorized by Rule 20(2)(A) of the
22 Federal Rules of Civil Procedure.

23 6. The price of eggs nearly tripled between the onset of the COVID-19 pandemic and the
24 end of March. Egg prices have remained much more than ten percent higher than they were prior to
25 the declaration of emergency.

26 7. Some or all of the defendants are engaging in price-gouging prohibited by California
27 law. Plaintiffs allege this because of the undeniable fact that egg prices nearly tripled after the
28 emergency declaration.

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PARTIES

1
2 8. Plaintiff Codey DeNoyelles purchased eggs at a store owned or operated by defendant
3 Raley’s and defendant Costco Wholesale Corp. at a grossly inflated price after the declaration of
4 emergency by Governor Newsom.

5 9. Plaintiff Adrienne Fraser purchased eggs at a store owned by defendant Whole Foods
6 Market Group, Inc., and ordered eggs from defendant Amazon.com, Inc., at a grossly inflated price
7 after the declaration of emergency by Governor Newsom.

8 10. Plaintiff Chevalia Morgan purchased eggs at a store owned or operated by defendant
9 Walmart Stores, Inc. at a grossly inflated price after the declaration of emergency by Governor
10 Newsom.

11 11. Plaintiff Carolyn Flowers purchased eggs at a store owned or operated by defendant
12 Save Mart Supermarkets at a grossly inflated price after the declaration of emergency by Governor
13 Newsom.

14 12. Plaintiff Petrina Fennell purchased eggs at a store owned or operated by defendant
15 Grocery Outlet, Inc. at a grossly inflated price after the declaration of emergency by Governor
16 Newsom.

17 13. Plaintiff Jill Mayer purchased eggs at a store owned or operated by defendant
18 Albertson’s Companies, Inc. at a grossly inflated price after the declaration of emergency by
19 Governor Newsom.

20 14. Plaintiff Kat Hall purchased eggs at a store owned or operated by defendant
21 Albertson’s Companies, Inc. at a grossly inflated price after the declaration of emergency by
22 Governor Newsom.

23 15. Plaintiff Eugene F. Elander purchased eggs at stores owned or operated by defendant
24 Trader Joe’s Co. and defendant The Kroger Co. at a grossly inflated price after the declaration of
25 emergency by Governor Newsom.

26 16. Plaintiff Iris Delgado purchased eggs at a store owned or operated by defendant
27 WinCo Holdings, Inc. at a grossly inflated price after the declaration of emergency by Governor
28 Newsom.

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1 17. Plaintiff Christa Rodriguez purchased eggs at a store owned or operated by defendant
2 Stater Bros. Holdings, Inc., at a grossly inflated price after the declaration of emergency by Governor
3 Newsom.

4 18. Defendant Cal-Maine Foods, Inc. is a corporation organized under the laws of
5 Delaware with its principal place of business in Jackson, Mississippi. It is a corporate citizen of
6 Delaware and Mississippi.

7 19. Defendant Rose Acre Farms, Inc. is a corporation organized under the laws of Indiana
8 with its principal place of business in Seymour, Indiana. It is a corporate citizen of Indiana.

9 20. Defendant Michael Foods, Inc. is a corporation organized under the laws of Delaware,
10 with its principal place of business in Minnetonka, Minnesota. It is a corporate citizen of Delaware
11 and Minnesota.

12 21. Defendant Hillandale Farms is a corporation organized under the laws of Ohio, with
13 its principal place of business in Newark, Ohio. It is a corporate citizen of Ohio.

14 22. Defendant Trillium Farm Holdings, LLC is an entity organized under the laws of Ohio,
15 with its principal place of business in Johnstown, Ohio. It is a corporate citizen of Ohio.

16 23. Defendant Rembrandt Enterprises, Inc. is a corporation organized under the laws of
17 Iowa, with its principal place of business in Spirit Lake, Iowa. It is a corporate citizen of Iowa.

18 24. Defendant Hickman's Egg Ranch, Inc. is a corporation organized under the laws of
19 Arizona, with its principal place of business in Buckeye, Arizona. It is a corporate citizen of Arizona.

20 25. Defendant Daybreak Foods, Inc. is a corporation organized under the laws of
21 Wisconsin, with its principal place of business in Lake Mills, Wisconsin. It is a corporate citizen of
22 Wisconsin.

23 26. Defendant Weaver Bros., Inc. is a corporation organized under the laws of Ohio, with
24 its principal place of business in Versailles, Ohio. It is a corporate citizen of Ohio.

25 27. Defendant Prairie Star Farms, LLC is an entity organized under the laws of Ohio, with
26 its principal place of business in New Weston, Ohio. It is a corporate citizen of Ohio.

27 28. Defendant Sparboe Foods Corp. is a corporation organized under the laws of Iowa,
28 with its principal place of business in Litchfield, Minnesota. It is a corporate citizen of Iowa and

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1 Minnesota.

2 29. Defendant Herbruck's Poultry Ranch, Inc. is a corporation organized under the laws
3 of Michigan, with its principal place of business in Saranac, Michigan. It is a corporate citizen of
4 Michigan.

5 30. Defendant Wabash Valley Produce, Inc. is a corporation organized under the laws of
6 Indiana, with its principal place of business in Dubois, Indiana. It is a corporate citizen of Indiana.

7 31. Defendant Centrum Valley Farms, L.P., is an entity organized under the laws of
8 Indiana, with its principal place of business in Clarion, Iowa. It is a corporate citizen of Iowa and
9 Indiana.

10 32. Defendant Opal Foods, LLC is an entity organized under the laws of Delaware, with
11 its principal place of business in Neosho, MO. It is a corporate citizen of Delaware and Missouri.

12 33. The defendants described in Paragraphs 18-32 are involved in egg production,
13 distribution, and wholesale delivery, and are in the supply chain bringing eggs to market in the
14 Northern District of California.

15 34. Whole Foods Market Group, Inc., is a corporation organized under the laws of
16 Delaware with its principal place of business in Austin, Texas. It is a corporate citizen of Delaware
17 and Texas.

18 35. Costco Wholesale Corp. is a corporation organized under the laws of Washington with
19 its principal place of business in Issaquah, Washington. It is a corporate citizen of Washington.

20 36. Raley's is a corporation organized under the laws of California, with its principal place
21 of business in Sacramento, California. It is a corporate citizen of California.

22 37. Stater Bros. Holdings, Inc. is a corporation organized under the laws of California,
23 with its principal place of business in San Bernardino, California. It is a corporate citizen of
24 California.

25 38. Defendant Wal-Mart Stores, Inc. is a corporation organized under the laws of
26 Delaware, with its principal place of business in Bentonville, Arkansas. It is a corporate citizen of
27 Delaware and Arkansas.

28 39. Defendant Amazon.com, Inc., is a corporation organized under the laws of Delaware,

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1 with its principal place of business in Seattle, Washington. It is a corporate citizen of Delaware and
2 Washington.

3 40. Defendant Save Mart Supermarkets is a corporation organized under the laws of
4 California, with its principal place of business in Modesto, California. It is a corporate citizen of
5 California.

6 41. Defendant Albertson’s Companies, Inc. is a corporation organized under the laws of
7 Delaware, with its principal place of business in Boise, Idaho. It is a corporate citizen of Delaware
8 and Idaho.

9 42. Defendant Trader Joe’s Co. is a corporation organized under the laws of California,
10 with its principal place of business in Pasadena, California. It is a corporate citizen of California.

11 43. Defendant The Kroger Co. is a corporation organized under the laws of Ohio, with its
12 principal place of business in Cincinnati, Ohio. It is a corporate citizen of Ohio.

13 44. Defendant WinCo Holdings, Inc. is a corporation organized under the laws of Idaho,
14 with its principal place of business in Boise, Idaho. It is a corporate citizen of Idaho.

15 45. The defendants described in paragraphs 34-44 are owners or operators of retail stores
16 or online retailers doing business in this district.

17 **JURISDICTION AND VENUE**

18 46. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 because the claims in this
19 case form part of a class action in which the amount in controversy exceeds the sum of \$5,000,000.00
20 and the members of the class include citizens of different states than some or all of the defendants.

21 47. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial
22 portion of the events giving rise to plaintiffs’ complaint occurred in this district.

23 48. Each defendant, whether a retailer, wholesaler, or producer of eggs, is in the business
24 of supplying eggs to customers in this federal district. Each defendant is part of the supply chain for
25 eggs in California.

26 **LEGAL FRAMEWORK AND BACKGROUND**

27 49. California law makes it unlawful for any person to increase the price of a product by
28 more than ten percent during a state of emergency or local emergency. Cal. Penal Code § 396. In this

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1 statute, the Legislature expressed its intent “to protect citizens from excessive and unjustified
2 increases in the prices charged during or shortly after a declared state of emergency or local
3 emergency for goods and services that are vital and necessary for the health, safety, and welfare of
4 consumers.” Id. at 396(a). Further, the California Legislature made it clear that this act should be
5 interpreted liberally for the protection of consumers.

6 50. Governor Gavin Newsom declared a state of emergency due to the COVID-19
7 pandemic on March 4, 2020, with a proclamation available online at [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)
8 [content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf). Governor Newsom’s
9 proclamation specifically invoked the provisions of Penal Code § 396 and extended the time period
10 in which they will remain in effect until September.

11 51. Section 396 of the California Penal Code applies not only to retailers, but to
12 distributors, wholesalers, and producers as well. Attorney General Xavier Becerra made this clear in
13 a proclamation issued March 27, 2020, available online at [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-reminds-wholesalers-and-manufacturers-they-are-subject)
14 [releases/attorney-general-becerra-reminds-wholesalers-and-manufacturers-they-are-subject](https://oag.ca.gov/news/press-releases/attorney-general-becerra-reminds-wholesalers-and-manufacturers-they-are-subject).

15 52. Section 396 explicitly states that a violation of the price-gouging statute “shall
16 constitute an unlawful business practice and an act of unfair competition within the meaning of
17 Section 17200 of the Business and Professions Code.” Cal. Pen. Code § 396(i). Thus, the rights and
18 remedies conferred by the UCL (Bus. & Prof. Code § 17200 et seq.) are available to consumer to
19 combat price gouging.

20 53. Section 396 also creates a safe harbor, but only for those sellers who price the goods
21 at no more than ten percent above their own costs, plus the markup usually charged prior to the state
22 of emergency. Because the price of eggs have risen more than 180% during the COVID-19
23 emergency, it is clear that some or all of the defendants have raised their prices to an extent that
24 violates the law.

25 54. Pursuant to Rule 20 of the Federal Rules of Civil Procedure, plaintiffs may join all
26 defendants against whom they seek relief jointly, severally, or in the alternative, arising out of the
27 same transaction or series of transactions. Plaintiffs’ purchases of eggs from retailers was part of a
28 series of transactions that also included any other sale of the eggs that occurred between their being

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1 laid and their arrival at the point of retail sale. Plaintiffs seek relief in the alternative from any and all
2 entities that marked up the eggs more than ten percent during the COVID-19 emergency.

3 **CLASS ALLEGATIONS**

4 55. This statewide class action is maintainable against the defendants pursuant to Rule 23
5 of the Federal Rules of Civil Procedure. Plaintiffs seek to represent the following class against each
6 defendant:

7 All consumers who purchased eggs in the state of California that were sold,
8 distributed, produced, or handled by any of the defendants during the state of
9 emergency declared by Governor Gavin Newsom on March 4, 2020. All employees
10 of the Court and plaintiffs' counsel are excluded.

11
12 56. Because plaintiffs bring this case in the alternative against numerous individual
13 entities involved in selling eggs in California, plaintiffs anticipate that they will seek to certify a
14 number of subclasses against particular defendants.

15 57. Pursuant to Rule 23(a)(1), the class is so numerous that joinder of all class members
16 is impracticable. California is the nation's most populous state, with more than 40 million residents.
17 According to the Association of California Egg Farmers, these 40 million people consume an average
18 of three hundred eggs per year. <http://californiaeggfarmers.org/>. This translates to more than twelve
19 billion eggs sold in California each year, or approximately one billion per month. The vast majority
20 of these eggs are sold by the defendants named in this lawsuit, who represent XX% of the California
21 grocery market, as well as the fifteen largest wholesalers of eggs in California. The number of people
22 who purchased eggs during the state of emergency is far too large for practicable joinder in a single
23 suit.

24 58. Pursuant to Rule 23(a)(2), this case is predominated by questions of law and fact
25 common to all class members, including whether the defendants increased their price by more than
26 ten percent during the COVID-19 emergency.

27 59. Pursuant to Rule 23(a)(3), the claims of the named plaintiffs are typical of those of the
28 class. Every member of the class is a consumer who purchased eggs during the emergency.

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1 eggs at a price more than ten percent greater than the price of eggs prior to the declaration of
2 emergency on March 4, 2020.

3 **COUNT TWO: VIOLATION OF THE UNFAIR COMPETITION LAW**

4 **CLAIM FOR RESTITUTION**

5 70. Plaintiffs incorporate by reference and reallege all factual averments of the preceding
6 paragraphs as if fully set forth herein.

7 71. As explained in Count One, the defendants violated the Unfair Competition Law by
8 violating Section 396 of the California Penal Code.

9 72. This violation entitles plaintiffs and the class to restitution. See Kwikset Corp. v.
10 Superior Court, 207 P.3d 20, 34 (Cal. 2009).

11 73. The measure of restitution in California is the difference between the price paid and
12 the value received. Chowning v. Kohl's Dept. Stores, Inc., 2018 WL 3016908 at *1-2 (9th Cir. 2018).

13 74. Under Section 396 of the California Penal Code, the legal value of the eggs purchased
14 by plaintiffs and the class could be no higher than ten percent more than the average retail price of
15 eggs prior to the emergency. Plaintiffs and the class are thus entitled restitution measured by the
16 difference between that price and the price paid.

17 **PRAYER FOR RELIEF**

18 Plaintiff respectfully prays for the following relief,

- 19 (A) An order certifying the above-described class pursuant to Federal Rule of Civil
20 Procedure 23, with appropriate notice to absent class members;
- 21 (B) An order appointing plaintiffs' counsel as class counsel for the statewide class;
- 22 (C) A declaratory ruling that the defendants have engaged in the practices alleged herein
23 in violation of California law;
- 24 (D) A permanent injunction enjoining defendants from selling eggs at prices prohibited
25 by Section 396 of the California Penal Code for the remainder of the COVID-19
26 emergency;
- 27 (E) Restitution to plaintiffs and absent class members in an amount determined by the
28 court pursuant to California law;

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(F) Any further or different relief the Court may find appropriate.

JURY DEMAND

Plaintiffs demand trial by jury for all issues so triable.

DATED: April 20, 2020

DAVIS & NORRIS, LLP



Robert B. Salgado, on behalf of
Plaintiffs and Proposed Class

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